

A foreign tax-exempt organization may claim exemption from withholding of tax on bond interest coupons presented for payment in the United States but will be subject to withholding for any taxable year in which the organization is a private foundation; Revenue Ruling 70-570 superseded.

Advice has been requested whether a foreign tax-exempt organization may be exempt from withholding of Federal tax under the circumstances described below.

The taxpayer, a foreign organization described in section 501(c)(3) of the Internal Revenue Code of 1954 and exempt from Federal income tax under section 501(a) of the Code, owns coupon-bearing bonds of domestic obligors and presents the coupons for payment, when due, within the United States. The bonds are not debt-financed property within the meaning of section 514 of the Code.

The bond interest is excluded from unrelated business taxable income of a tax-exempt organization by section 512(b)(1) of the Code and section 1.512(b)-1(a) of the Income Tax Regulations.

Accordingly, the withholding provisions for the unrelated business taxable income of foreign tax-exempt organizations under section 1443(a) of the Code do not apply. However, in order to claim exemption from withholding at source with respect to the interest payments, a notation should be made on the ownership certificates (Form 1001, Ownership Certificate-Nonresident) filed with the interest coupons substantially as follows: 'As this organization has been held exempt from Federal income tax under section 501(a) of the Code, and this obligation is not debt-financed property under section 514 of the Code, the interest entered on this ownership certificate is not subject to withholding.'

Section 4948(a) of the Code imposes a tax equal to four percent of the gross investment income, derived from sources within the United States, of every foreign organization that is a private foundation for the taxable year. Section 4940(c)(2) of the Code includes in 'gross investment income' the gross amount of income from interest, dividends, rents, and royalties, but not any such income that is included in computing the tax imposed by section 511. Since the interest income described above is not subject to tax under section 511 of the Code, it may be subject to tax under section 4948(a) of the Code. Section 1443(b) of the Code provides that chapter 3 of the Code shall apply for the deduction and withholding of the tax imposed by section 4948(a) of the Code.

Accordingly, although the described organization may claim exemption from withholding of Federal income tax on its bond

interest income, it will be subject to withholding of tax on that income under section 1443(b) of the Code for any taxable year in which the organization is a private foundation.

Revenue Ruling 70-570, C.B. 1970-2, 177, is hereby superseded since the position stated therein is restated in this Revenue Ruling.